

Nebraska Sales and Use Tax Guide for Food, Food Ingredients, and Dietary Supplements

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For more information, check our Web
site: www.revenue.ne.gov

Other information guides you may need:

**Prepared Food
Bars, Taverns, and Restaurants**



The purpose of this information guide is to explain the sales tax responsibilities for sellers of food, food ingredients, and dietary supplements. The guide is not intended to answer all questions which may arise, but is intended to enable a person to become familiar with sales tax provisions related to food, food ingredients, and dietary supplements.

Overview

Sales of items that are food and food ingredients are exempt from sales and use tax **except** when sold through a vending machine, sold by a concessionaire, or prepared or served by a caterer. Products containing the “Nutrition Facts” box on the product label are exempt. While most grocery store sales of food and food ingredients are tax exempt, sales tax is due on food and food ingredients that are sold as prepared food.

Dietary supplements are not food or food ingredients. Sales of dietary supplements are subject to tax. Dietary supplements include any product intended to supplement the diet, that is not presented as conventional food, and that is labeled as a dietary supplement with the “Supplement Facts” box found on the product label.

Definitions

Food or food ingredients means substances, whether in liquid, concentrated, solid, frozen, dried, or dehydrated form that are sold for ingestion or chewing by humans and are consumed for their taste or nutritional value.

Examples of food and food ingredients include:

- Baby food and formulas, bottled water, breath mints, bread, cake mixes, candy, cereal, chewing gum, eggs, flour, fruit, gravy mixes, health foods consumed in place of other foods and not as a vitamin or mineral supplement, ice, jelly, meat, milk, nuts, pumpkins, soups, spices, sugar, tea, vegetables, and vegetable oil; and
- Meal substitutes, such as Ensure® or Slim Fast®. These products are classified as food since they are required to contain the “Nutrition Facts” box on their labels and are therefore, exempt.

Food and food ingredients does not include alcoholic beverages, dietary supplements, or tobacco.

Dietary supplement means any product, other than tobacco, intended to supplement the diet which is identified by the “Supplement Facts” box found on the label and is required to be labeled as a dietary supplement, pursuant to Code of Federal Regulations, title 21, section 101.36; and which

1. Contains one or more of the following dietary ingredients:
 - A vitamin,
 - A mineral,
 - An herb or other botanical,
 - An amino acid,
 - A dietary substance for use by humans to supplement the diet by increasing the total dietary intake, or
 - A concentrate, metabolite, constituent, extract, or combination of any of the above ingredients; and
2. Is intended for ingestion in tablet, capsule, powder, soft gel, gel cap, or liquid form, or if not intended for ingestion in such a form, is not presented as conventional food and is not represented for use as the sole item of a meal or of the diet.

Examples of dietary supplements include:

- Amino acids, antioxidants, appetite suppressants, garlic capsules, herbal supplements, lecithin, vitamins and minerals, and zinc lozenges.

Alcoholic Beverages

Sales of alcoholic beverages are taxable, whether sold packaged as “off-sale,” or by-the-drink as “on-sale.” Bars, taverns, and restaurants that hold a liquor license are permitted to include the sales tax in the selling price of beverages that are consumed on their premises. Sales of soft drinks from such establishments may be treated in the same manner.

Consumer’s use tax is due on the seller’s cost of alcoholic beverages provided free-of-charge.

Vending Machine Sales

All food sold through a vending machine is subject to tax. The location of the machine determines the applicable **local option** (city or county) sales tax that applies to the sales. The gross receipts from vending machine sales of food include the state and local sales tax. The sales tax does not have to be separately stated on vending machine sales.

Concession Sales

Concession sales are sales of food and beverages made during the conduct of another event, such as a movie, concert, sporting event, or craft fair. All concession sales of food and beverages are subject to tax except those made by elementary and secondary schools. Concessionaires are permitted to include the sales tax in the selling price.

Reporting the Tax

Sales tax that is included in the receipts from sales of alcoholic beverages, vending machine sales, and concession sales must be deducted from the total amount charged to determine the actual amount of the sale for reporting on line 1 of the Nebraska and Local Sales and Use Tax Return, Form 10 (see Nebraska Sales and Use Tax Regulation 1-008 for additional information on calculating taxable receipts).

Caterers

Individuals or businesses providing catered foods or beverages must collect sales tax on receipts from preparing or serving such

foods and beverages. Charges for food, wages, bartenders, wait staff, chefs, use of dishes, room service, chairs, tables, etc., are taxable even though separately stated on the billing invoice. The tax applies whether the food is served by the seller or merely provided to the purchaser for consumption. Sales tax does not apply to separately stated charges for announcers, coat room clerks, doormen, or other persons not connected with the preparation or serving of prepared food and beverages.

Discounts and Coupons

Seller’s Coupon. When a customer uses a coupon or a frequent-buyer card, etc., for a discount or a free product (e.g., “buy one, get one free”) and a third party is **not** reimbursing the seller for the discounted amount, sales tax is due on the amount actually paid by the customer. The coupon amount is not taxed.

Manufacturer’s Coupon. When a customer uses a coupon for a discount or a free product and the seller is reimbursed by a third party for the discounted amount, sales tax is due on the full selling price of the product before subtracting the coupon amount. The coupon amount is taxed.

Food Baskets

The sale of food baskets is a transaction where a taxable product (e.g., basket) and an exempt product (e.g., fruit) are sold for one price.

The sale of food baskets or other decorative containers that contain food are taxable if the seller’s cost or sales price of the nonfood item (i.e., the basket) is more than 10 percent of the seller’s total cost or sales price of the food and nonfood items together. If the seller’s cost or sales price of the nonfood item is 10 percent or less of the seller’s total cost or sales price of both items, the entire sale is exempt.

Sellers can use either their cost or the sales price of the products to determine if tax must be collected.

Garden Seeds and Plants

Sales of garden seeds, bulbs, and plants which produce food products, such as tomato plants, pepper seeds or plants, onion sets, and fruit trees, are subject to sales tax unless actually purchased with food stamp benefits.

Sales of seeds, bulbs, and plants which produce food products are exempt when sold to commercial producers.

FOR NEBRASKA TAX ASSISTANCE

For All Tax Programs Except Motor Fuels

Contact your regional office or call **1-800-742-7474** (toll free in NE and IA)

or **1-402-471-5729**

Nebraska Department of Revenue Web site address: www.revenue.ne.gov

A copy of the Taxpayer Bill of Rights is available by calling any of our regional offices or visiting our Web site.

SCOTTSBLUFF

Panhandle State Office Complex
4500 Avenue I, Box 1500
Scottsbluff, Nebraska 69363-1500
Telephone (308) 632-1200

NORTH PLATTE

Craft State Office Building
200 South Silber Street
North Platte, Nebraska 69101-4200
Telephone (308) 535-8250

GRAND ISLAND

TierOne Bank Building, Suite 460
1811 West Second Street
Grand Island, Nebraska 68803-5469
Telephone (308) 385-6067

NORFOLK

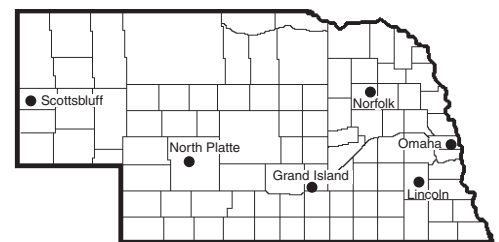
304 North 5th Street, Suite “D”
Norfolk, Nebraska 68701-4091
Telephone (402) 370-3333

OMAHA

Nebraska State Office Building
1313 Farnam-on-the-Mall
Omaha, Nebraska 68102-1871
Telephone (402) 595-2065

LINCOLN

Nebraska State Office Building
301 Centennial Mall South
Lincoln, Nebraska 68509-4818
Telephone (402) 471-5729



For Motor Fuels tax programs only call toll free 1-800-554-3835 (Lincoln residents call 471-5730).

Hearing-impaired individuals may call the Text Telephone (TT) at 1-800-382-9309. TDD (Telecommunications Device for the Deaf) is designated by the use of “TT,” which is consistent with the Americans with Disabilities Act.